

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LOCALS 302 AND 612 OF THE
INTERNATIONAL UNION OF
OPERATING ENGINEERS
CONSTRUCTION INDUSTRY HEALTH
AND SECURITY FUND; LOCALS 302
AND 612 OF THE INTERNATIONAL
UNION OF OPERATING ENGINEERS-
EMPLOYERS CONSTRUCTION
INDUSTRY RETIREMENT FUND;
WESTERN WASHINGTON OPERATING
ENGINEERS-EMPLOYERS TRAINING
TRUST FUND,

Plaintiffs,

v.

NESS & CAMPBELL CRANE, INC., an
Oregon corporation,

Defendant.

NO.

COMPLAINT TO COMPEL AUDIT

Plaintiffs Locals 302 and 612 of the International Union of Operating Engineers Construction Industry Health and Security Fund, Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Fund, and Western Washington Operating Engineers-Employers Training Trust Fund and allege:

COMPLAINT TO COMPEL AUDIT

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I.

They are unincorporated associations operating as trust funds pursuant to Section 302 of the Labor Management Relations Act of 1947, as amended, to provide medical, retirement, and training benefits for eligible participants. Plaintiffs' offices are located in King County, Washington.

II.

The Court has jurisdiction over the subject matter of this action under Section 502 (e)(1) and (f) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1132 (e)(1) and (f) and under Section 301 (a) of the Taft-Hartley Act, 29 U.S.C. §185 (a).

III.

Venue is proper in this district under Section 502 (e)(2) of ERISA, 29 U.S.C. §1132 (e)(2), because plaintiff Trusts are administered in this district.

IV.

Defendant is an Oregon corporation.

V.

Defendant is bound to a collective bargaining agreement with Local 302 of the International Union of Operating Engineers (hereinafter "Local"), under which Defendant is required to promptly and fully report for and pay monthly contributions to the Plaintiff Trusts at varying, specified rates for each hour of compensation Defendant pays to its employees who are members of the bargaining unit

1 represented by the Local (such bargaining unit members are any of Defendant's part
2 time or full time employees who perform any work task covered by the Defendant's
3 labor contract with the Local, whether or not those employees actually join the Local).

4 VI.

5 Defendant accepted the Plaintiffs' respective Trust Agreements and thereby
6 agreed to audits by the Plaintiff Trusts of its records as follows, in part:

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8 The Board may require the Employers, any Signatory Association, any
9 Individual Employer, the Union, any Employee or other beneficiary to promptly
10 furnish to the Trustees, on demand, such payroll records, information, data,
11 reports, or documents reasonably required for the purposes of administration
12 of the Fund. The parties agree that they will use their best efforts to secure
13 compliance with any reasonable request of the Board for any such information,
14 data, reports or documents. The Trustees, or their authorized representatives,
15 may examine the pertinent payroll records of each Individual Employer with
16 respect to the Employees benefiting from this Agreement whenever the
17 Trustees in connection with the proper administration of the Fund deem such
18 examination necessary or advisable.

19 In the event that any such audit shall determine that the Individual Employer is
20 delinquent in the payment of contributions due the Fund, the Individual
21 Employer shall be obligated for the cost of such audit; provided, however, that
22 the Board of Trustees may waive the imposition of such costs upon good
23 cause shown.

24 VII.

25 The Trustees of Plaintiff Trusts deem it both necessary and advisable to the
26 proper administration of the Trusts that their authorized representatives examine the
27 Defendant's books and records for the inclusive period of July 1, 2018 through
28 December 31, 2018 to determine if the Defendant previously reported for and paid to
29 the Trusts all of the amounts due them for the inclusive employment of members of
30 the bargaining unit represented by the Local for said period.

VIII.

On April 27, 2018, the auditors sent Defendant a notification letter. On March 5, 2019 On March 5, 2019, the auditors called the Defendant and requested payroll records. On March 8, 2019 and March 25, 2019, the auditors received records via email from the Defendant, but noted that the payroll did not cover all of the hours reported to the Trusts. Beginning April 24, 2019, the auditors had multiple email and phone exchanges with Defendant to troubleshoot the problem. The auditors determined that there was an issue with how the report was filtered and the Defendant advised them that Defendant planned on having a consultant come in to help. On December 10, 2019, the auditor asked for an update via email that Defendant did not respond to. On January 21, 2020, the auditors informed Defendant via email that it had until February 7, 2020 to provide them with a path to completing the audit. To date, the Defendant has failed to respond and make all of the requested records available for the thorough examination the Trustees deem necessary and advisable to the proper administration of the Trusts.

WHEREFORE, Plaintiffs pray the court as follows:

1. That the Court enter an Order Compelling Audit under which the Defendant shall be directed by the Court, within a specified time to make available to the authorized representatives of the Trustees of the Trusts the following documents:

A. Detail of hours worked and paid for all employees working in Washington, Alaska, or whose hours are reported back to Local

302 & 612 from another states (such as reciprocity or key man agreement).

- B. State Unemployment Insurance Quarterly Reports where necessary (the auditors already have Washington, but if there are other states, the auditor may need those).
- C. Employee List showing job title/occupation of everyone on the above records.
- D. Job site address list showing the name and location where bargaining unit work was performed.

2. Afford to the authorized representatives of the Trustees of the Trusts both ample time and opportunity to examine all such materials of Defendant at such time and at such place as shall be convenient to the Trustees' authorized representatives.

3. For judgment against the Defendant for:

- A. All of the Plaintiffs' attorney's fees incurred in gaining auditor access to Defendant's records;
- B. All auditing expenses incurred by the Trusts in conducting the audit;
- C. All of the Plaintiffs' costs incurred in gaining auditor access to defendant's records; and
- D. For such other and further relief as the Court may deem just and equitable.

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1 DATED this 17~~th~~ day of March, 2020.

2 REID, McCARTHY, BALLEW & LEAHY,
3 L.L.P.

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6 Russell J. Reid, WSBA #2560
7 Attorney for Plaintiffs
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